

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**TROY D. SPEARS**

Claimant

VS.

**PENMAC PERSONNEL SERVICES, INC.**

Respondent

AND

**ZURICH AMERICAN INSURANCE CO.**

Insurance Carrier

Docket No. 1,021,857

**ORDER**

Respondent and its insurance carrier request review of the August 4, 2005 preliminary hearing Order entered by Administrative Law Judge Thomas Klein.

**ISSUES**

The Administrative Law Judge (ALJ) authorized Dr. Prostic as claimant's treating physician but denied him temporary total disability benefits.

The respondent requests review of whether the ALJ exceeded his jurisdiction in authorizing Dr. Prostic as claimant's treating physician rather than having respondent provide a list of three physicians from which the claimant could choose an authorized treating physician.

Claimant argues the respondent's appeal should be dismissed as the Board does not have jurisdiction to address an award of medical compensation on appeal from a preliminary hearing. In the alternative, claimant requests the Board to affirm the ALJ's Order.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant was provided medical treatment for his work-related injury. After his third visit with the authorized physician the claimant testified the doctor did not provide any return instructions for additional medical treatment. The claimant's employment with respondent was terminated that same day.

Claimant sought additional medical treatment. Judge Klein granted claimant's request. The ALJ's Order also named Dr. Prostic as the authorized treating physician. Respondent argues that in so doing the ALJ violated provisions of K.S.A. 2004 Supp. 44-510h(b)(1) which states in pertinent part as follows:

If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of three health care providers who, if possible given the availability of local health care providers, are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider. If the injured employee is unable to obtain satisfactory services from any of the health care providers submitted by the employer under this paragraph, either party or both parties may request the director to select a treating health care provider.

The Board has ruled in the past and continues to hold that this is not a jurisdictional issue subject to review on an appeal from a preliminary hearing Order.<sup>1</sup> Jurisdiction is described in *Allen*<sup>2</sup> as follows:

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly. (Citations omitted.)

The workers compensation administrative court has limited jurisdiction. Its subject matter jurisdiction is limited to cases involving accidental injuries arising out of and in the course of employment. Whether claimant suffered accidental injury and whether the injury arose out of and in the course of employment are, therefore, designated in K.S.A. 44-534a as jurisdictional issues. Personal jurisdiction requires notice and timely written claim. Notice and written claim are also designated as jurisdictional issues under K.S.A. 44-534a. Whether the ALJ must, in a given set of circumstances, authorize treatment from a list of three physicians designated by respondent is not a question which goes to the jurisdiction of the ALJ. An ALJ has the jurisdiction to decide this question.

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<sup>1</sup>See *Briceno v. Wichita Inn West*, No. 211,226, 1997 WL 107613 (Kan. WCAB Feb. 27, 1997) and *Graham v. Rubbermaid Specialty Products*, No. 219, 395, 1997 WL 377947 (Kan. WCAB June 10, 1997).

<sup>2</sup> *Allen v. Craig*, 1 Kan. App. 2d 301, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

**WHEREFORE**, it is the finding of the Board that the respondent's appeal is dismissed and Administrative Law Judge Thomas Klein's Order dated August 4, 2005, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this 30th day of September 2005.

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BOARD MEMBER

c: William L. Phalen, Attorney for Claimant  
Timothy A. Emerson, Attorney for Respondent and its Insurance Carrier  
Thomas Klein, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director